

Internal Revenue Service

Number: **201131001**

Release Date: 8/5/2011

Index Number: 851.02-00

Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:02

PLR-104670-11

Date:

April 18, 2011

Legend

Portfolio =

Fund =

State =

Country =

Type X =

Company

Total Return =

Index

Excess
Return
Index =

Total Return =
Subindex

Excess
Return =

Date 1 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This responds to your request dated January 18, 2011, and supplemental correspondence dated April 5, 2011, submitted by your authorized representative on behalf of Portfolio. Portfolio requests that the Internal Revenue Service rule that: (1) income earned from investments in the commodities-linked notes described below will constitute qualifying income to Portfolio under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), and (2) income earned by Portfolio from its investment in its wholly-owned foreign corporation subsidiary will constitute qualifying income to Portfolio under section 851(b)(2) of the Code.

Facts

Portfolio is an open-end fund and a series of Fund. Fund is a corporation organized under the laws of State and is registered as an investment company under

the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the “1940 Act”). Portfolio has elected or will elect to be taxed as a regulated investment company (“RIC”) under Subchapter M of the Code. Portfolio uses an accrual method of accounting and has a fiscal year ending on Date 1.

Commodities-linked Notes

Portfolio intends to invest in the following commodities-linked notes (each, a “Note” and, together, the “Notes”), each of which will have a payout determined by reference to a commodities index or subindex (each, an “Index”). Note A will have a par value of \$a and a payout determined by reference to Total Return Index. Note B will have a par value of \$b and a payout determined by reference to Excess Return Index. Note C will have a par value of \$c and a payout determined by reference to Total Return Subindex. Note D will have a par value of \$d and a payout determined by reference to Excess Return Subindex.

The term of each Note will be e months. Portfolio will have the right to put any Note to the issuer at the calculated redemption price based on the closing value of the relevant Index as of the end of the next day after notification to the issuer. If on any day the relevant Index has fallen f% from the value of such Index at the time a Note was acquired, the Note will be automatically redeemed at the calculated redemption price based on the closing value of the Index on the next business day.

Each Note’s payout upon maturity or redemption is determined under a formula that provides for a return of the Note’s face amount, increased or decreased by the product of the face amount, a leverage factor of g, and the percentage increase or decrease in the applicable Index over the applicable period. To this amount is added an amount that reflects interest at a rate equal to h. From this amount is subtracted an annual fee amount of i basis points of the leveraged face amount.

The redemption prices of Note A and Note C will be further adjusted for the reversal of interest rate factors included in the total return computations of the corresponding Indexes.

Portfolio makes the following representations with respect to the Notes:

(1) The issuer of each Note has received or will receive payment in full of the purchase price of the Note substantially contemporaneously with the delivery of the Note;

(2) Portfolio, while holding a Note, will not be required to make any payment to the issuer of the Note in addition to the purchase price paid for the Note, whether as margin, settlement payment, or otherwise, during the life of the Note or at maturity;

(3) The issuers of the Notes are not and will not be subject by the terms of the Notes to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (the “CEA”);

(4) The Notes have not been and will not be marketed as contracts of sale of commodities for future delivery (or options on such contracts) subject to the CEA; and

(5) Portfolio does not have any direct or indirect control over the composition of any Index.

Controlled Foreign Corporation

Portfolio will invest in a wholly-owned subsidiary (“Subsidiary”), organized as a Type X Company under the laws of Country. Under the laws of Country, a Type X Company provides for limited liability for all holders of shares. A shareholder’s liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary will file an election on Form 8832 to be taxed as a corporation pursuant to section 301.7701-3 of the Procedure and Administration Regulations.

Portfolio represents that, although Subsidiary will not be registered as an investment company under the 1940 Act, Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and the related guidance issued by the Securities and Exchange Commission pertaining to asset coverage, with respect to investments to which this authority would apply if Subsidiary were registered under the 1940 Act.

Portfolio will invest a portion of its assets in its Subsidiary, subject to the diversification limitations set forth in section 851(b)(3) of the Code. Subsidiary will invest primarily in commodity index-linked securities and other commodities-linked securities and derivative instruments, but may also make other investments.

Law and Analysis

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the “qualifying income requirement”). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Under section 851(b)(2), a corporation’s qualifying income includes —

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the [1940 Act]) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies. . . .

Section 2(a)(36) of the 1940 Act defines the term "security" as —

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if —

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in

gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Portfolio represents that Subsidiary will be wholly owned by Portfolio, and that Subsidiary therefore will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Under section 954(c)(1), foreign personal holding company income includes (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subsidiary's investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Portfolio therefore will include in its income subpart F income of Subsidiary in accordance with section 951.

Conclusion

Based on the facts as represented, we rule that income earned from the Notes constitutes qualifying income to Portfolio under section 851(b)(2) of the Code. We further rule that subpart F income of Subsidiary attributable to Portfolio is income derived with respect to Portfolio's business of investing in the stock of Subsidiary and thus constitutes qualifying income to Portfolio under section 851(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Portfolio qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer requesting it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)